6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2020-0002; FRL-10016-52-Region 8]

Determination of Attainment by the Attainment Date for the Salt Lake City, Utah and Provo, Utah 2006 24-Hour $PM_{2.5}$ Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) has determined that the Salt Lake City, Utah and Provo, Utah Serious nonattainment areas (NAAs) attained the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) by the December 31, 2019 "Serious" area attainment date. The determination is based on quality-assured, quality-controlled and certified ambient air quality monitoring data from 2017 through 2019, available in the EPA's Air Quality System (AQS) database.

DATES: This final action is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2020-0002. All documents in the docket are listed on the http://www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through http://www.regulations.gov,

or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means the EPA.

I. Background

On October 17, 2006 (71 FR 61144), in accordance with section 109(d)(1) of the Clean Air Act (CAA), the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS, lowering the primary and secondary standards from the 1997 level of 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. On November 13, 2009 (74 FR 58688), the EPA designated several areas as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS, including the Salt Lake City and Provo NAAs. On May 10, 2017 (82 FR 21711), the EPA determined that the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ NAAs failed to attain by the Moderate area attainment date of December 31, 2015 and were reclassified to Serious 2006 24-hour $PM_{2.5}$ NAAs.

Under 40 CFR 50.13 and 40 CFR part 50, appendix N, a NAA meets the 2006 24-hour $PM_{2.5}$ NAAQS when the area's design value[1] is less than or equal to 35 $\mu g/m^3$. On June 8, 2020 (85 FR 35033), the EPA proposed to determine, based on the most recent three years (2017-2019) of valid data,[2] that the Salt Lake City and Provo NAAs have attained the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS. Subsequently, on July 7, 2020 (85 FR 40618), the EPA published a correction document, which corrected an error in Table 1 of the June 8 proposed

[1] The design value is the 98th percentile 24-hour concentration, as determined in accordance with appendix N.
[2] Meeting the requirements of 40 CFR part 50, appendix N, and 40 CFR part 58.

rule. The table in the June 8 document had erroneously listed the 2017-2019 98th percentiles and design value for the Spanish Fork monitor twice; correctly, in the row for the Spanish Fork monitor, and incorrectly, in the row for the Lindon monitor. Additional detail on the basis for this action can be found in the June 8 proposed action and the July 7 correction document.

II. Response to Comments

The EPA received a public comment on the June 8 proposed action that identified the inaccuracy discussed above. The EPA acknowledged this mistake and corrected the table in the July 7, 2020 (85 FR 40618) correction document, which also gave notice that the EPA was providing an additional comment period. From June 8, 2020 to August 6, 2020, the EPA received additional public comments on the proposed action and the correction document from Western Resource Advocates (WRA), the Utah Petroleum Association (UPA), and from individuals. Below is the summary of comments submitted and the EPA's response to these comments.

WRA comment: WRA submitted comments[3] asserting that because the data do not include three years of monitoring from a near-road monitor, EPA cannot determine that the Salt Lake City area attained the 2006 24-hour $PM_{2.5}$ standard by the Serious attainment date of December 31, 2019. Citing the EPA's 2013 rule revising the PM NAAQS (78 FR 3086, 3241) the comment asserts that Utah was required to have an operational $PM_{2.5}$ near-road monitor in the Salt Lake City NAA by January 1, 2017, but that Utah did not install the monitor until January 2019. WRA further states that the August 24, 2016 $PM_{2.5}$ state implementation plan (SIP) Requirements rule (81 FR 58010, 58136) supports that requirement by providing evidence that $PM_{2.5}$ concentrations are higher near highways and that, as a result, low-income and minority populations are

[3] *See* https://beta.regulations.gov/comment/EPA-R08-OAR-2020-0002-0130.

disproportionately exposed to high $PM_{2.5}$ concentrations and therefore bear a disproportionate risk of adverse health outcomes from $PM_{2.5}$. Citing the same rule, the comment asserts that "EPA has explained that monitoring data from the required $PM_{2.5}$ near road monitor[s] is to be considered when determining if a nonattainment area is attaining a $PM_{2.5}$ NAAQS." The comment asserts that "Utah did not meet its legal obligations and failed to install and operate a near-road monitor as required, by the beginning of 2017," and that "[w]ithout data covering 2017 to 2019 from an operational near road monitor, Utah cannot show and EPA cannot find attainment." WRA requests that the EPA withhold any determination of attainment by the attainment date of the $PM_{2.5}$ standard "until Utah can establish that the standard is being met at a near road monitor."

As a further basis for its request, WRA cites the COVID-19 global pandemic, recent studies that show a preliminary link between $PM_{2.5}$ exposure and death from COVID-19, health disparities in the U.S. population, and disproportionate pollution impacts on parts of the population, including those living near highways.

EPA response: The EPA agrees that new near-road $PM_{2.5}$ monitor requirements were set out in the January 15, 2013 $PM_{2.5}$ rule (78 FR 3086), but we do not agree that the Agency is prohibited from making a determination that the Salt Lake City area attained by its attainment date because of the absence of three full years of data from a near-road $PM_{2.5}$ monitor. As explained below, quality-assured, quality-controlled, and certified ambient air quality monitoring data were collected for each year from 2017 through 2019 in accordance with an approved annual monitoring network plan (AMNP) for each year. The EPA has reviewed this data and concludes that it justifies a finding of attainment and shows the area attained by its attainment date.

Under the CAA, the Agency must determine whether the area attained by the attainment date, based on the area's design value as of the attainment date (i.e., the design value derived from the three calendar years of data preceding the attainment date).[4] The design value calculation must be based on three years of valid annual mean values for data collected at a suitable monitor for $PM_{2.5}$, determined in accordance with the procedures in 40 CFR part 50, appendix N.[5] Review and approval of AMNPs requires notice and comment at the state level; the state must include and address any comments in the plan submitted to the EPA for review.[6]

With respect to the commenter's assertion concerning the EPA's 2013 rule revising the PM NAAQS, that rule did require at least one operational near-road $PM_{2.5}$ monitor in each Core Based Statistical Area (CBSA) with a population greater than or equal to 1 million but less than 2.5 million by January 1, 2017.[7] But it did not bar the EPA from making attainment determinations in the absence of near-road monitors. As recognized in the 2016 rule that WRA relies on,[8] "States should consult with the appropriate EPA regional office to determine how and when near-road data should be used in the $PM_{2.5}$ NAAQS implementation process for specific nonattainment areas."[9]

The EPA's finding that an area has attained the 2006 24-hour $PM_{2.5}$ standard must be based on complete, quality-assured data that is gathered at established state and local air monitoring stations (SLAMS) in the NAA and entered in AQS. Monitoring agencies submit AMNPs to the EPA for review and approval, and annually certify that the data submitted to AQS

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[4] CAA sections 179(c) and 188(b)(2); 40 CFR 50.13; 40 CFR part 50, appendix N, 4.2.
[5] Suitable monitors are generally all federal reference or equivalent monitors, except for certain continuous monitors where the state, with EPA's approval, has found the data not to be of sufficient quality. 40 CFR part 50, appendix N; see also 40 CFR 58.11.
[6] 40 CFR 58.10(a)(1).
[7] 78 FR 3086, 3241; 40 CFR 58.13(f)(2).
[8] 81 FR at 58051.
[9] *Id.*

are accurate to the best of their knowledge. As described in our proposed rule, the Utah Division of Air Quality (UDAQ) has complied with these requirements, and the EPA approved the AMNPs for the relevant years.[10]

The monitoring requirements in 40 CFR 58.10 lay out the roles of the air agency and the EPA in identifying whether a site is consistent with the network plan requirements for a NAAQS. Accordingly, after the January 15, 2013 (78 FR 3086) final rule became effective, the State of Utah and EPA Region 8 began collecting information and assessing multiple characteristics for each identified roadway. An important consideration for near-road assessments was the complexity of urban land use in the Salt Lake City NAA. Factors such as the type of road (highways and arterial roadways), traffic activity patterns (number of vehicles, fleet mix, and vehicle speeds), traffic volume, meteorology (wind speed/direction, temperature, humidity, and atmospheric stability), topography, roadway design features, and the presence of nearby structures and barriers were reviewed by UDAQ in conjunction with historical monitoring data to show potential near-road $PM_{2.5}$ sites.

After UDAQ's review of the parameters above and following the EPA's guidance,[11] the State identified the Interstate-15 (I-15) corridor as the best candidate for a near-road $PM_{2.5}$ monitoring site. Near the end of 2016, however, the Utah Department of Transportation (UDOT) began a major expansion project on I-15 to help address traffic problems. Due to the timing of this highway expansion on I-15, UDAQ was not able to place a properly sited near-road $PM_{2.5}$ monitor by the January 1, 2017 deadline. Alternate locations outside the I-15 corridor were considered by UDAQ and the EPA, but on closer review of the traffic counts by both agencies at these locations, they were determined to be outside the core areas where potential pollution

[10] 85 FR 35033, 35034.
[11] Near-road NO_2 Monitoring Technical Assistance Document, EPA-454/B-12-002.

impacts would be near a location of maximum NO_2 concentrations,[12] and therefore would not satisfy the monitoring network requirements or be as useful for achieving monitoring objectives.[13]

UDAQ and the EPA discussed how to address the monitor siting question in light of the highway construction, and in July 2018 a EPA Region 8 monitoring contact conducted an on-site assessment with UDAQ monitoring staff along the I-15 corridor to identify potential sites. During this assessment, they located several potential sites, but all but one was determined to be unusable. The only potential site had been set aside initially because the station could not be installed long-term due to the road expansion, which would require the site to be moved multiple times. Nonetheless, after discussions with UDOT and the additional site reviews, UDAQ and the EPA decided in August 2018 that the best location was the site that had initially been set aside. Therefore, the near-road $PM_{2.5}$ monitoring site was established and began recording data on January 1, 2019 (AQS ID 49-035-4002), after the road construction was completed.

The near-road $PM_{2.5}$ site, including updates on site locations, was discussed in UDAQ's AMNPs. As required, following publication, the AMNPs were available for at least 30 days of public inspection and comment. If any comments had been submitted, UDAQ would have been required to address any significant issues raised in the public comment before submitting the AMNP to the EPA for review. The EPA acts on AMNPs through informal adjudications in which the EPA determines whether the network plans satisfy the requirements in 40 CFR 58.10. Such adjudications are not rulemakings subject to the public participation requirements of the

[12] 40 CFR part 58, appendix D, 4.7.1(b)(2). For CBSAs with a population of 1,000,000 or more persons, at least one $PM_{2.5}$ monitor is to be collocated at a near-road NO_2 station required in section 4.3.2(a) of this appendix. 40 CFR part 58, appendix D, 4.3.2(a) contains requirements for Near-road NO_2 Monitors, including a requirement that a monitor be sited to monitor expected maximum hourly concentrations near a major road.
[13] 40 CFR part 58, appendix D, 1.1

Administrative Procedure Act (APA) (*see* 5 U.S.C. 553), although they are final agency actions subject to judicial review (*see* 5 U.S.C. 706).[14]

In this case, UDAQ provided each of the AMNPs to the public for the required 30-day inspection, and no public comments were submitted on any AMNP. Based on the completeness of the network, and considering the constraints imposed on Utah's planning by the I-15 road construction project, the EPA approved the AMNPs for 2017, 2018 and 2019. No party challenged the approval of any of these AMNPs.

Although the near-road monitor was not included in the 2017-2019 AMNPs, and although the one year of available data from that monitor is not sufficient for calculating a design value, UDAQ and the EPA have decided to make the data from that monitor available in AQS for public review. The 98th percentile daily average concentration for 2019 at the $PM_{2.5}$ near-road monitor was 31.0 $\mu g/m^3$. Therefore, the available data do not support a conclusion that, if the monitor had been operating since 2017 with concentrations similar to 2019 and had a valid design value based on three years of data, data from the near-road monitor would have altered the conclusion that the area attained the standard.

The lack of three years of near-road data does not preclude the EPA from making a determination based on the available data for the Salt Lake City NAA as to whether the area attained by the statutory Serious 2006 24-hour $PM_{2.5}$ attainment date of December 31, 2019, because the EPA is making the determination based on a design value determined in accordance with the requirements of 40 CFR part 50, appendix N, and other relevant regulations. As stated in the comment from WRA,"*[w]hen* complete data from near-road $PM_{2.5}$ ambient monitors become available, the data should be used by states and the EPA for all aspects of the NAAQS

[14] 81 FR 17248, 17251 (March 28, 2016).

implementation process, from attainment planning to the determination of attainment."[15] UDAQ's near-road $PM_{2.5}$ monitor does not have a complete 3-year design value to be used in the determination, and accordingly it should not be considered in calculating the area's design value. UDAQ and the EPA are committed to collecting a complete 3-year data set for the near-road $PM_{2.5}$ monitor in the future.

With respect to WRA's comment about COVID-19, the CAA requires the EPA to determine whether an area attained an established NAAQS by its attainment date. The statute does not permit the agency to decline to make that determination on the basis raised by the commenter. As explained further below in the response to the citizen comments, this determination of attainment by the attainment date is based on attainment of the existing 2006 24-hour $PM_{2.5}$ NAAQS. Any consideration of new factors, including those regarding vulnerable populations raised by WRA, would come into play if EPA were to set a new NAAQS, not in making attainment determinations under existing NAAQS.[16]

Comment: UPA submitted comments in support of the proposed determination that the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ NAAs attained by their Serious area date of December 31, 2019. UPA provides details on the design values (2017-2019) at all eligible monitors in the Salt Lake City NAA and asserts that they meet the primary and secondary 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$. UPA states that these design values are a result of emission reductions in direct $PM_{2.5}$ and $PM_{2.5}$ precursors from a large number of sources (e.g., major point sources, mobile sources, etc.). Additionally, UPA comments that the proposed determination meets the detailed requirements laid out in 40 CFR part 50, appendix N, which comprises the

[15] WRA comment, docket ID: EPA-R08-OAR-2020-0002-0130, quoting 81 FR 58010, at 58138 (Aug. 24, 2016) (emphasis added).
[16] 71 FR 61152/1 (October 17, 2006) (24-hour $PM_{2.5}$ standards); 85 FR 24094 (April 30, 2020) (Proposed 24-hour $PM_{2.5}$ NAAQS).

total of all requirements that the NAA must meet for a determination of attainment by the attainment date.

EPA response: We acknowledge the UPA's comments.

Comment: The remaining comments submitted for the proposed finding that the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ NAAs attained by the Serious attainment date of December 31, 2019, were from multiple citizens, some of whom were anonymous. Generally, these comments presented a number of arguments against the proposed determination of attainment by the attainment date: (1) the NAAs are some of the most polluted regions for $PM_{2.5}$ in the country, according to the American Lung Association; (2) the data leading to EPA's attainment determination are primarily due to a series of milder and stormier winters with fewer inversion days, not to major progress in reducing emissions; (3) by relaxing the requirements that haven't been attained for several years previously, the sense of urgency about seriously unhealthy air quality by the State of Utah will be reduced; (4) the CAA states that air quality standards "shall accurately reflect the latest scientific knowledge," but the current $PM_{2.5}$ standards are not up to date; and (5) the air they breathe impacts the health of the individual, the family, and the communities.

Some of these comments from citizens were unique in content. One commenter requested that the refineries should be moved east of the Wasatch Front, with incentives if necessary, to move them outside the metropolitan counties. Another commenter mentioned that these areas are still out of attainment for the ozone NAAQS.

EPA response: In making a determination as to whether a $PM_{2.5}$ area attained by its attainment date, the EPA is permitted to consider only the air quality data of the area as of the attainment date. See CAA section 179(c)(1) (general nonattainment area provision) ("As

expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, *based on the area's air quality as of the attainment date*, whether the area attained the standard by that date.") (emphasis added); CAA section 188(b)(2) (subpart 4 PM specific provisions) ("Within 6 months following the applicable attainment date for a PM–10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date."). We therefore do not agree that the concerns raised by the commenter—that the areas at issue in this document are purportedly "some of the most polluted regions for $PM_{2.5}$ in the country"; that air quality data were primarily influenced by meteorological factors; that making the determination could have a disincentivizing effect on efforts of state regulators; and that the current $PM_{2.5}$ NAAQS are not sufficiently up to date—are bases that the EPA may consider when making its determination of whether an area attained by the attainment date. The statute simply does not permit the agency to take into consideration the types of factors raised by these comments.

With respect to the comment that the air the public breathes affects the individual, families, and communities, the EPA agrees. This is precisely why the CAA requires the EPA to make determinations of whether an area attained the NAAQS by its attainment date. If a Serious $PM_{2.5}$ area fails to attain by its attainment date, the EPA's determination triggers statutory consequences, such as contingency measures (CAA section 172(c)(9)); the requirement to submit a new plan within 12 months of the finding of failure to attain demonstrating how the area will attain (CAA section 189(d)); and from the date of such submission until attainment, an annual reduction in $PM_{2.5}$ or $PM_{2.5}$ precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area (CAA section 189(d)).

The commenter's second, third, fourth, and fifth points above are beyond the scope of this action, as is the comment requesting that refineries be moved away from the Salt Lake City area. The comment stating that the State of Utah still has ozone NAAs has not presented any information germane to this action. The EPA is not permitted to consider the attainment or nonattainment status of areas in a state for other NAAQS when making determinations of whether an area attained the NAAQS at issue by its attainment date.

III. Final Action

The EPA is finalizing our determination, pursuant to CAA section 188(b)(2), that based on the most recent 3 years (2017-2019) of quality assured, certified air quality monitoring data, the Salt Lake City and Provo NAAs attained the 2006 24-hour $PM_{2.5}$ NAAQS by the December 31, 2019 attainment date.

This final action does not constitute a redesignation of the Salt Lake City and Provo NAAs to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under CAA section 107(d)(3), because we have not yet approved a maintenance plan for the Salt Lake City and Provo NAAs as meeting the requirements of section 175A of the CAA and have not determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 will remain Serious nonattainment for these areas until the EPA determines that Utah has met the CAA requirements for redesignation to attainment for the Salt Lake City and Provo NAAs.

IV. Statutory and Executive Order Reviews

This action finalizes a determination of attainment by the attainment date based on air quality and thus would not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, Jan. 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, Feb. 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

In addition, this action is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Accordingly, the action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, Nov. 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 29, 2020.

Gregory Sopkin,
Regional Administrator,
Region 8.

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